

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.10.2018

CORAM

THE HONOURABLE TMT.JUSTICE S.RAMATHILAGAM

CMA.No.3 of 2006

V.Chinnaraj

... Appellant/Petitioner

Versus

1.K.Kumara Pillai

2.United India Insurance Co. Ltd.,

Motor 3rd Party Claims Offices,

No.38, Anna Salai,

Chennai - 600 002.

(R1 Exparte)

... Respondents/Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree dated 17.04.2003 made in M.C.O.P.No.4059 of 1999 on the file of the Additional District and Sessions Court, Chennai (Fast Track Court - IV), Chennai.

For Appellant : Mr. S.Parthiban

For R2 : Mr.P.Sankaranarayanan

JUDGMENT

This Civil Miscellaneous Appeal is directed against the Judgment and Decree dated 17.04.2003 made in M.C.O.P.No.4059 of 1999 on the file of the Additional District and Sessions Court, Chennai (Fast Track Court - IV), Chennai.

2. The brief facts of the case are as follows:-

On 16.01.1999 at about 1.00 p.m., the claimant was travelling as a pillion rider in the TVS.50 bearing Registration No.TN-07-J-7769 and proceeding in the left side of the 100 feet Tharamani Road, Velachery, at that time, a water tanker lorry bearing Registration No.TMZ 3607 came from the opposite direction and on the wrong side in a rash and negligent manner and hit against the claimant, due to which the claimant had sustained severe injuries. The claimant has claimed a sum of Rs.3,00,000/- as compensation for the injuries sustained by him.

3. The Second respondent/Insurance Company, in the counter statement, has denied the mode of accident. The averment made in the counter statement is that the first respondent, who is the owner of the alleged tanker lorry had failed to appear before the Court, inspite of receiving the summon. Further, it is averred that the driver of the two wheeler did not possess any valid driving license at the time of accident. The said lorry also does have a valid permit and fitness certificate to ply on the road. Hence, the 1st respondent/owner of the vehicle had violated the terms and conditions of the policy and the 2nd respondent/Insurance Company has disowned the liability. The other aspect regarding the compensation claimed by the claimant, his age, occupation, income and treatment underwent by the claimant were also denied.

4. The Tribunal, upon analyzing the evidence and documents, has given a finding that though the accident is proved, the injuries sustained by the claimant only due to the said accident is not proved by the claimant. Hence, the Tribunal dismissed the claim application. Aggrieved against the same, the claimant has preferred this appeal.

5. In the grounds of appeal, the appellant has stated that though the tribunal has observed that the accident occurred due to the fault of the driver of the offending vehicle, but erred in holding that the injured claimant did not prove that he sustained injury only due to the said accident. It is also contended that in the absence of any contra evidence on the side of the 2nd respondent/Insurance Company to deny the occurrence of the accident, the tribunal ought to have observe that the claimant sustained injuries only due to the said accident. The other grievances raised by the appellant is that the complainant, who preferred the FIR was not examined before the tribunal. The tribunal has also committed an error is not considering Ex.P1-discharge summary, since it is in the letter head.

6. Heard both sides and perused the materials available on record.

7. The argument advanced by the appellant is that, the 2nd respondent/Insurance Company has admitted the accident by stating that the rider of the said two wheeler did not possess any valid license and hence the Insurance Company is not liable to pay compensation. Therefore, the accident is very much proved before the tribunal. Further, the argument advanced by

the appellant is that the accident occurred on 16.01.1999 and the complaint was preferred by one Loganathan and he only helped the injured person and admitted him in the Royapettah Hospital for treatment.

8. On the other hand, it is argued by the respondent that the Tribunal has observed that the claimant was immediately admitted as inpatient in the Royapettah hospital for the period from 16.01.1999 to 20.01.1999, but he has not produced any documents relating to the treatment taken by him for the said period. Whereas, on perusal of Ex.A1-Discharge Summary, it is seen that the said discharge summary was obtained from Isabella Hospital, that apart the said discharge summary typed in a letter head without signature. Hence, the tribunal has raised doubt the genuinity of the discharge summary and also observed that the said discharge summary has been prepared by the claimant only for the purpose of claiming compensation. The tribunal has also observed that the Loganathan, who lodged complaint was not examined before the tribunal. Hence, the tribunal has come to the conclusion that the injuries sustained by the claimants were not by the alleged accident and the document produced by the claimants also failed to substantiate the claim made by him and accordingly dismissed the claim petition.

9. Since, the tribunal has dismissed the claim petition preferred by the claimant, in view of the fact that the documents placed were not convincing to prove the claim made by him, this Court also unable to see any reason to interfere with the findings of the Tribunal. The order of the tribunal is confirmed.

10. In the result, this Civil Miscellaneous Appeal is dismissed. No costs.

Sd/-
सत्यमेव जयते

Assistant Registrar(CS V)

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Sub Assistant Registrar

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To

1. The Additional District and Sessions Court,
(Fast Track Court - IV), Chennai.

2. The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.P.Sankara Narayanan, Advocate Sr.74797

CMA.No.3 of 2006

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